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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,763

09/22/2003

Ray C. Wasielewski

DEP759NP

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27777 7590 07/14/2008
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EXAMINER

PHILOGENE, PEDRO

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

07/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/667,763	Applicant(s) WASIELEWSKI, RAY C.	
	Examiner Pedro Philogene	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 13-19 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 13-19, 29-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 13-19, 29-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hershberger et al. (5,470,354) in view of Gerber (5,871,541).

With respect to claims 1, 13, 40, Hershberger et al disclose an instrumented prosthetic knee trial (80) comprising an articulating surface (88,90) a polymer layer at the articulating surface; as set forth in column 7, lines 45-57; a body (84) having curved contoured surface; a sensor array (150,200) between the polymer layer and the curved contoured surface of the body; as best seen in FIGS.3, 26, the sensor array being capable of generating a signal in response to pressure; the polymer layer overlying substantially all the sensor array; a first joint trial having a curved convex articulating surface a second joint trial curved concave articulating surface for receiving the convex articulating surface of the first joint; as best seen in FIGS.1-2; the polymer layer having a curved contour substantially following the curved contour of the sensor array, as set best seen in FIG.4, the polymer layer overlying substantially all the sensor array, as best seen in FIGS. 18, 21; the body below the sensor array having a curved concave surface (96) adjacent to the sensor array.

With respect to claims 2-6, 14-19, 41-42, Hershberger et al et al discloses all the limitations; as set forth in column 6, lines 8-67, column 7, lines 1-67, column 8, lines 1-67, column 9, lines 1-67, column 10, lines 1-16; and as best seen in FIGS.1-32.

With respect to claims 29-39, the method steps, as set forth, would have been obviously carried out in the operation of the device; as set forth above.

It is noted that Hershberger discloses that the sensor and polymeric layer are flexible and conform to the flat surface of the body. Hershberger did not teach of a body having concave surface, a sensor having concave and convex surfaces and a polymer layer having concave and convex surfaces, as claimed by applicant. However, these particular configurations of the body the sensor and polymer layer are nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious for the purpose of providing mating surfaces in the prosthetic knee of Hershberger et al.

Hershberger did not teach of a body having concave surface, a sensor having concave and convex surfaces and a polymer layer having concave and convex surfaces, as claimed by applicant. However, in a similar art, Gerber, provides the evidence of a body (12) having a concave surface, a meniscus (14) having a concave and convex surfaces to achieve high mobility of the knee joint in all directions, with no loss of joint stability.

Therefore, given the teaching of Gerber, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of

Hershberger et al, as taught by Gerber, to achieve high mobility of the knee joint in all directions, with no loss of joint stability.

Response to Amendment

Applicant's arguments, see Remarks, filed 4/23/08, with respect to the rejection(s) of claim(s) 1-6, 13-19, 29-42 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Berger. Berger discloses a body with articulating surface that is concave. Hershberger discloses a body with an articulating surface that is flat. Also Hershberger discloses that the sensor array and the polymeric layer are flexible to conform to the flat surface of the body. Since the sensor array and the polymeric layer that covers the sensor array are flexible; they will conform to the concave surface of the Gerber and form concave and convex shapes simultaneously.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro Philogene/
Primary Examiner, Art Unit 3733
July 10, 2008